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*Public Service  
Staff Relations Act*

Before the Public Service  
Labour Relations Board

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BETWEEN

**EVA SABIR, SANDRA JOHNSTON AND PAMELA BRIAR**

Complainants

and

**DOUG RICHMOND, GERRY HOOPER AND DON DEMERS**

Respondents

Indexed as

*Sabir et al. v. Richmond et al.*

In the matter of complaints made under section 23 of the *Public Service Staff Relations Act*

**REASONS FOR DECISION**

***Before:*** D.R. Quigley, Board Member

***For the Complainants:*** Norm Wickstrom, Professional Institute of the Public Service of Canada

***For the Respondents:*** John Jaworski, counsel

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Heard at Abbotsford, British Columbia,  
August 10 to 12, 2005, and January 10 to 12, 2006.  
(Written submissions filed on March 1, May 1 and May 15, 2006.)

## REASONS FOR DECISION

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### Complaints before the Board

[1] On August 27, 2004, the complainants, Eva Sabir, Sandra Johnston and Pamela Briar, filed identical complaints pursuant to section 23 of the *Public Service Staff Relations Act (PSSRA, the “former Act”)*. They allege that Doug Richmond, at the time Acting Executive Director at the Pacific Institution Regional Treatment Centre (RTC); Gerry Hooper, at the time Acting Deputy Commissioner for the Pacific Region; and Don Demers, at the time Deputy Commissioner for the Pacific Region, have contravened the prohibitions set out in subsection 8(1), subparagraph 8(2)(c)(ii) and subsection 9(1) of the *PSSRA*. As the complaints are worded similarly, I will only reproduce Ms. Sabir’s. It reads as follows:

...

*2. The Complainant complains that she has been removed from her regular duties and her place of work as a direct result of engaging in legitimate activities as a Steward and representative for the Bargaining Agent, the Professional Institute of the Public Service of Canada*

*2 ( c ) The Correctional Service has interfered in the administration of an employee organization, and has interfered in the representation of employees of such an organization, contrary to section 8 ( 1 )*

*The Correctional Service has sought, by intimidation, threat, and the imposition of a penalty or another means, to compel the complainant to refrain from exercising a right under the act, contrary to the provision of section 8 ( c ) ( ii)*

*The Correctional Service has taken action against the complainant solely because she is a Steward and has acted as a representative of the employee organization of which she is a member, contrary to section 9 ( i ) of the Act*

...

[Sic throughout]

[Emphasis in the original]

[2] The complainants are seeking the following corrective action:

...

*5. (i)A declaration that sections 8 (i), 8 ( c ) (ii), and 9 ( i ) of the Act have been contravened.*

- (ii) *That the Correctional Service cease and desist from such contravention*
- (iii) *That the Correctional Service restore the complainant to her work place and otherwise make her whole in every way.*
- (iv) *That the Correctional Service be constrained from acting in any similar fashion in the future.*

[Sic throughout]

[3] On April 1, 2005, the *Public Service Labour Relations Act* (the "Act"), enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 39 of the *Public Service Modernization Act*, the Board continues to be seized with these complaints, which must be disposed of in accordance with the new Act.

[4] Counsel for the respondents introduced 52 exhibits and called two witnesses. The complainants' representative introduced 26 exhibits and called nine witnesses.

[5] At the outset of the hearing, both parties requested an order to exclude witnesses, which was granted. Both parties made brief opening remarks.

[6] The parties agreed to submit their arguments in writing after the evidentiary portion of the hearing. The arguments were duly filed with the Board on the agreed-upon dates.

[7] The sections of the former Act relevant to these complaints read as follows:

*8. (1) No person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall participate in or interfere with the formation or administration of an employee organization or the representation of employees by such an organization.*

*(2) Subject to subsection (3), no person shall*

...

*(c) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or any other penalty or by any other means to compel an employee*

...

*(ii) to refrain from exercising any other right under this Act.*

...

9. (1) Except in accordance with this Act or any regulation, collective agreement or arbitral award, no person who occupies a managerial or confidential position, whether or not the person acts on behalf of the employer, shall discriminate against an employee organization.

...

23. (1) The Board shall examine and inquire into any complaint made to it that the employer or an employee organization, or any person acting on behalf of the employer or employee organization, has failed

- (a) to observe any prohibition contained in section 8, 9 or 10;
- (b) to give effect to any provision of an arbitral award;
- (c) to give effect to a decision of an adjudicator with respect to a grievance; or
- (d) to comply with any regulation respecting grievances made by the Board pursuant to section 100.

(2) Where, under subsection (1), the Board determines that the employer, an employee organization or a person has failed in any manner described in that subsection, the Board may make an order directing the employer, employee organization or person to observe the prohibition, give effect to the provision or decision or comply with the regulation, as the case may be, or take such action as may be required in that behalf within such specified period as the Board may consider appropriate.

(3) An order under subsection (2) directed to a person shall

(a) where that person has acted or purported to act on behalf of the employer, be directed as well

(i) in the case of a separate employer, to the chief executive officer thereof, and

(ii) in any other case, to the Secretary of the Treasury Board; and

(b) where that person has acted or purported to act on behalf of the employee organization, be directed as well to the chief officer of that employee organization.

Relevant background facts

[8] The complainants are registered nurses (NU Group) employed with the Correctional Service of Canada (CSC). The certified bargaining agent for the NU Group is the Professional Institute of the Public Service of Canada (PIPSC).

[9] The CSC operates a medical hospital that services institutions across the Pacific region. In July 2003, it moved the Regional Reception and Assessment Centre (RRAC), located at Matsqui Institution, to the Pacific Institution Regional Treatment Centre (RTC).

[10] The Pacific Institution is a multi level security facility that houses all incoming federal inmates from the Pacific region. Within the institution there is a medical and psychiatric hospital and a rehabilitation centre.

[11] The RTC medical hospital replaced the medical hospital at Matsqui Institution.

Summary of the evidence

[12] Ms. Sabir has been a registered nurse for approximately 32 years and has been employed with the CSC since 1996.

Sabir's roster issue

[13] According to the complainant, initially one nurse was scheduled on the evening shift, from 7:00 p.m. to 7:00 a.m. (an 11.75-hour shift), at the Matsqui hospital within the institution. Following several unfortunate incidents involving inmates, two nurses were then scheduled to work that particular shift. However, as part of the transition of moving the Matsqui hospital to the new RTC medical hospital, management decided to make roster (shift) changes, and reverting back to having only one nurse on the evening shift was explored. The complainants testified that the nurses felt that having only one nurse on the evening shift at the RTC put their safety, the patients' safety and their professional nursing practice at risk.

[14] In late 2003 and early 2004, informal discussions took place with the nurses and Debra Gaskell, Director and Chief Nurse at the RTC. The discussions centered around changing the nurses' 11.75-hour shift and having only one nurse on the evening shift rather than two. On April 7, 2004, a consultation meeting was held at the RTC, which the complainants, Ms. Sabir, Ms. Johnston and Ms. Gaskell, and

Dr. Art Gordon, Executive Director of the medical hospital and Ms. Gaskell's supervisor, among others, attended.

[15] Ms. Gaskell proposed the following: if the union stewards present consented that day: management would agree to keep the 11.75-hour shift, but only one nurse would be scheduled to work the evening shift.

[16] The bargaining agent's representatives did not accept this proposal and countered with a revised version of the roster for the nurses to vote on.

[17] Management did not accept this proposal, however. The final proposal tabled by Ms. Gaskell was a 7 days on, 3 days off (7-3) and 7 days on, 4 days off (7-4) schedule with the 11.75-hour roster and only one nurse on the evening shift. The nurses were advised that they could submit revised rosters. A deadline was set for April 16, 2004. They would then be asked to vote on a mutually agreeable roster by April 26, 2004.

[18] The complainant stated that eight to 10 roster schedules were given to Ms. Gaskell, all of which maintained a minimum of two nurses on the evening shift. None of these were acceptable to Ms. Gaskell. In return, Ms. Gaskell presented a number of roster scenarios on which she asked the nurses to vote. As these scenarios did not include having two nurses on the evening shift, the nurses opted not to vote.

[19] Ms. Gaskell then informed the nurses that, as of May 10, 2004, they would begin working a 7.5-hour shift instead of the 11.75-hour shift that they were accustomed to.

[20] In response to the impending 7.5-hours shift, Ms. Sabir sent a letter on April 19, 2004, to Dr. Gordon (Exhibit G-3). The letter requested that a risk assessment be conducted by a competent authority to analyze the need to have a second nurse on the evening shift because of the nurses' safety concerns. Ms. Sabir expressed the bargaining agent's position that the impending 7.5-hour shift was in contravention of the collective agreement. Dr. Gordon replied on April 21, 2004 (Exhibit G-4), indicating that it was management's belief that having a single nurse on the evening shift was appropriate, reasonable and safe. As well, he stated that management was not violating the collective agreement by choosing to schedule a 7.5-hour shift.

[21] On April 30, 2004, the complainants sent a letter to Dr. Gordon (Exhibit G-5), again requesting that a risk assessment be conducted. They again raised issues with regard to an alleged violation of the collective agreement. Ms. Sabir testified that she, personally, never received a response from Dr. Gordon.

[22] On May 19, 2004, the complainants and their representative, Mr. Wickstrom, attended a PIPSC Labour-Management Consultation meeting at Regional Headquarters, which was chaired by Heather Bergen, Assistant Deputy Commissioner. The issue of the imposition of the roster change was brought forward to the Chair through a document that outlined the concerns the nurses had with regard to their safety, the safety of patients and their nursing practice as a result of the new roster. The nurses had submitted 70 to 80 grievances, and morale was low. They requested a return to the 11.75-hour shift and that a risk assessment be conducted by a competent authority. Ms. Sabir testified that she never received a response from Ms. Bergen on the issues raised at that meeting.

[23] Ms. Sabir testified that, as a result of the move from Matsqui Institution to the RTC, there were a large number of stewards at the RTC. The stewards voted to have Ms. Sabir and Ms. Johnston be their spokespersons for the roster and two nurses' issues. The results of the vote were sent to Ms. Gaskell in early spring 2004.

[24] In her testimony, Ms. Sabir stated that she and the other nurses at the RTC were unaware that Morrie Steele (an external nurse consultant) had been retained by the CSC to do a risk assessment. In cross-examination, a letter dated July 7, 2004 (Exhibit E-3) to Mr. Wickstrom from Paul Urmson, Acting Assistant Deputy Commissioner, was produced. The letter informed Mr. Wickstrom that Mr. Steele's services had been retained and that Mr. Steele was to conduct a review the week of July 19, 2004. Ms. Sabir acknowledged that she was aware of the contents of the letter. However, Mr. Wickstrom clarified to the Board that he had not received the letter until July 15, 2004.

[25] In response to Exhibit E-3, Mr. Wickstrom wrote to Mr. Urmson on July 16, 2004 (Exhibit E-4), asking for clarification as to Mr. Steele's mandate. Ms. Sabir acknowledged that, although she received a copy of this letter, she did not receive it until July 20, 2004. Ms. Sabir confirmed that she met with Mr. Steele in his office but could not recall the date. She testified that she received a draft copy of Mr. Steele's *Health Risk Assessment* on September 7, 2004, and that on September 22, 2004 she received a

copy of his final report from Pauline Lentinu, Chief of the Regional Health Services Pacific Region.

[26] The complainant stated that as a result of Mr. Steele's report, and further to a meeting held with the PIPSC and management, it was agreed that the evening shift at the RTC required two nurses, and the 11.75-hour shift was reinstated.

#### Sabir's harassment issue

[27] Ms. Sabir identified Exhibit G-6 as an email sent on July 1, 2004, by Sue Falconer, a PIPSC steward, to the complainants and other affected nurses. With respect to the issue of "roster ideas", it states:

...

*Hi again. Thanks to Pam and Bally for responding to my previous e-mail. I note that each of you feel that it is inappropriate to have only one nurse on nights. As we have discussed frequently, none of us feel that it is safe, for patients or staff, to have only one nurse on nights. Both responses to the e-mail suggest that the roster (attached) is not viable as it has only one nurse on nights. I agree that we need two nurses on nights. I believe, however, that it will be some time before our current roster will be fixed, and in the interval I would suggest working a roster that still allows for increased time off, while limiting nights (alone) to an 8 hour shift, as has also been suggested by several of the staff nurses in conversation. When possible, we will have a roster that gives us 2 staff on nights. At present that does not appear to be possible. I would suggest looking at a roster that gives us some of what we want, while we continue to work on a roster that gives all of us our best practice . . . options.*

*I should also explain just a couple of things for your further consideration. I have heard that the request from RHQ to the RNABC for a risk assessment has been turned down by RNABC. The [sic] have refused to come in here to assess our risk, as they feel it is not within their purvue. Secondly, the DC has apparently decided that one nurse on nights in the medical hospital is entirely appropriate, and has suggested that there be no second nurse booked on nights unless Debra or Lisa assess that it is absolutely necessary (with the assistance of the nurses on duty).*

*So, here we are. We work 7-3-7-4 for the foreseeable future. There is an anticipation that the isolation rooms will be ready for occupancy by November, and when that occurs, I have been told that C unit will be open for business, allowing*



*for 4 more nurses to be hired - probably one of them will work nights. That will then provide for two nurses on nights. Until that time, we have only ourselves to work with, and I personally detest the present roster. I am advocating for staff by sending out suggestions, as a PIPSC representative I encourage us to look for solutions to our problems and offer them to management. If you disagree with this I welcome your comments and suggestions regarding the roster. I attach once more for your consideration and comments the mixed hours roster I sent out a few days ago, and hope you will send me your comments regarding this roster.*

[28] Ms. Sabir responded to the recipients of Ms. Falconer's email on July 2, 2004 (Exhibit G-6), as follows:

*As one of the Reps at the table I must say I have had NO reply from the DC regarding our concerns. I find it interesting that he is sending out information to ?someone ?everyone without having the courtesy to reply to the Union that raised the issue first. Perhaps this serves to underlie the consultative process that does not exist in this workplace.*

*Similarly I have seen no reply from RNABC.*

*Perhaps the ONLY thing Management has done well to this point is to bolster a communication system that is not consultative, and that serves to 'divide and conquer' if we choose to let it.*

...

[Sic throughout]

[29] Ms. Sabir stated that Ms. Falconer was acting in Ms. Gaskell's position at the time, but she was at a loss as to where Ms. Falconer obtained the information contained in her email. She also stated that, as a courtesy, the information should have been provided to the bargaining agent.

[30] On July 23, 2004, Ms. Sabir was summoned by Ms. Gaskell to attend a meeting with Mr. Richmond. She was accompanied at this meeting by Jasmine MacKay, a PIPSC steward and a registered nurse since 1972, and Dave Kereliuk, a PIPSC regional union representative. She was advised by Mr. Richmond that Ms. Falconer had filed a harassment complaint against her. She was provided with a memorandum from Mr. Hooper, dated July 21, 2004 (Exhibit E-2), offering mediation to attempt to resolve the complaint, stating that the Employee Assistance Program was available and outlining the Treasury Board *Policy on the Prevention and Resolution of Harassment in*

*the Workplace*. She was also given a vetted copy of the harassment complaint in compliance with the *Privacy Act*.

[31] Mr. Richmond informed Ms. Sabir that he was separating the parties involved in the harassment complaint and that she was to report to Mission Institution at 9:00 a.m. on July 26, 2004. She was then escorted off the RTC premises by Ms. Gaskell.

[32] On October 4, 2004, Ms. Sabir received a letter (Exhibit E-7) from Mr. Demers informing her that after reviewing Ms. Falconer's harassment complaint he found that it met the criteria found in the Treasury Board *Policy on the Prevention and Resolution of Harassment in the Workplace*. Mr. Demers' letter also informed her that Michael McCaffrey, an external harassment assessor, had been retained by the CSC to investigate Ms. Falconer's harassment complaint.

[33] On March 29, 2005, Mr. Demers wrote to Ms. Sabir to inform her that Mr. McCaffrey's final investigation report had been completed, and provided her with a copy of the report. The report had been submitted to the CSC on February 11, 2005.

[34] Ms. Sabir referred to paragraph 56 of Mr. McCaffrey's final investigation report (Exhibit G-7), where he reproduced an email from Ms. Gaskell to Ms. Falconer offering suggestions as to how Ms. Falconer should word her email of July 1, 2004 (Exhibit G-6):

"I'd temper it a bit.

First thank the two that did respond to your e-mail. Then follow up by saying that the responses you did receive were critical of you placing only one nurse on nights which is was [sic] not in support of the wishes of the nurses.

Then I'd go on to say that you want to have two nurses on nights also. Also state however, that you can easily argue needing two nurses on nights with a roster that is more palatable to members than the current one. Encourage people to separate the issue of 2 nurses on nights and the roster they are working."

[35] Ms. Sabir stated that Ms. Gaskell's intervention demonstrates collusion with Ms. Falconer. According to Ms. Sabir, this was what formed the basis for the harassment complaint filed against her.

[36] Ms. Sabir stated that, although she could have returned to the RTC in January 2005, as Ms. Falconer was no longer there, for personal reasons she only returned on June 15, 2005.

[37] In cross-examination, Ms. Sabir agreed that she was employed in the Health Cluster Unit and as part of her terms and conditions of employment she could be required to work at different locations across the Pacific region.

[38] Ms. Sabir confirmed that she received a memorandum dated July 29, 2004 (Exhibit E-5), entitled “Harassment Complaint Separating the Parties” and signed by Mr. Richmond. The memorandum states, in part:

...

*Access to the Regional Treatment Centre and Pacific Institution is restricted until this complaint is resolved. Should you require site access, authorization may be granted by the Executive Director or designate.*

...

[39] Ms. Sabir agreed with counsel for the respondents that she never requested access to the RTC.

[40] When asked if she had ever met Mr. Hooper, the author of Exhibit E-2, Ms. Sabir replied that she had not. She also stated that no one had advised her of the harassment complaint before she met with Mr. Richmond. Although she agreed that she did not participate in mediation offered by the CSC, she stated that it was because she felt that if she participated it would mean that she was guilty of harassment. As far as she was concerned, the harassment complaint was an effort by CSC management to remove her from the workplace so that she could not pursue the roster issue and having two nurses on the evening shift.

[41] Ms. Johnston has been a registered nurse for approximately 16 years and has been employed with the CSC for four years.

#### Johnston’s roster issue

[42] Ms. Johnston’s version of the roster issue was very similar to Ms. Sabir’s, if not identical. I will, therefore, only note any variations or clarifications that Ms. Johnston provided during her testimony.

[43] Ms. Johnston stated that in December 2003 Ms. Gaskell decided not to replace the second nurse on the evening shift if that nurse called in sick. The first official discussion of roster issues was at a medical hospital consultation meeting held on February 2, 2004, which Ms. Johnston, Ms. Briar, Ms. Falconer and Ms. Gaskell, and Dr. Gordon, among others, attended. No agreement was reached at that meeting. The next meeting was held on April 7, 2004, and is reported in Ms. Sabir's testimony above.

[44] Ms. Johnston described the meetings and discussions with Ms. Gaskell as confrontational. The roster scenarios she presented to Ms. Gaskell were not accepted. In her opinion, the roster scenarios presented by Ms. Gaskell violated the collective agreement.

[45] On April 29, 2004, the first version of the 7.5-hour roster was posted. The roster was changed three times by management before it was finally implemented on May 10, 2004.

[46] Ms. Johnston testified that the email of July 1, 2004 (Exhibit G-6) from Ms. Falconer to the affected nurses came as a surprise, and that she believed that Ms. Falconer was privy to inside information. Ms. Johnston stated that she and Ms. Sabir had been elected by the other nurses to be their spokespersons on these issues.

[47] Ms. Johnston stated that she was informed by email on July 23, 2004, that Mr. Steele was to meet with her one on one on July 26, 2004.

#### Johnston's harassment issue

[48] On July 23, 2004, Ms. Johnston received a telephone call at her home advising her that she was required to meet with Ms. Gaskell and Mr. Richmond on July 26, 2004. There was no indication as to what the meeting was about. On July 26, 2004, at 10:00 a.m., she first met with Mr. Steele. At approximately 3:00 p.m. she attended the meeting with Ms. Gaskell and Mr. Richmond, where she was accompanied by Ms. Briar and Jerome Fransblow, a PIPSC steward.

[49] At this meeting Mr. Richmond gave her Mr. Hooper's harassment complaint covering letter (Exhibit E-14) and a vetted copy of Ms. Falconer's complaint. Mr. Richmond informed her that she was to be temporarily reassigned to either Kent or Mountain Institution until the harassment complaint was resolved. She was asked her

preference and she responded that it was Mountain Institution. She was advised to call Mr. Richmond the following morning at 9:00 a.m. to see if her preference could be accommodated. She was then escorted off the CSC premises by Ms. Gaskell.

[50] On July 27, 2004, Ms. Johnston called Mr. Richmond and was informed that she would be temporarily reassigned to Kent Institution. Mr. Richmond's explanation was that she was trained as an infectious diseases nurse. Ms. Johnston, however, denied having such training.

[51] She reported to Kent Institution the next day, on July 28, 2004, and it was not until February 2, 2005, that she returned to the RTC, as she had been informed by Mr. Richmond's memorandum (Exhibit G-13) that her access to the RTC was restricted.

[52] On December 16, 2004, Ms. Johnston attended a meeting with CSC officials, which was facilitated by Jeff Christian, who had been retained by the CSC. The outcomes of the meeting were an agreement to return to two nurses on the evening shift and that the 11.75-hour roster that Ms. Johnston had presented to Ms. Gaskell on April 7, 2004, was implemented.

[53] Ms. Johnston stated that in Mr. McCaffrey's final harassment investigation report, dated February 11, 2005 (Exhibit G-14), Ms. Falconer's harassment complaint against her was found to be unfounded and vexatious.

[54] In cross-examination, the complainant acknowledged that by accepting employment with the CSC she was susceptible to being assigned to other work locations throughout the Pacific region.

[55] She also agreed that, although she was advised that her access to the RTC was restricted, she could have been granted access if she contacted the executive director or designate of the RTC. She agreed with counsel for the respondents that at no time did she request access to the RTC while she was temporarily reassigned.

[56] When asked by counsel if she had ever met or talked with Mr. Hooper, who was acting for Mr. Demers, she replied that she had not.

[57] The complainant acknowledged that she was offered mediation by the CSC to try and resolve the harassment complaint filed by Ms. Falconer. She stated, however, that she declined the offer, as she felt that she had done nothing wrong.

[58] She also acknowledged that Mr. Richmond was the acting executive director replacing Dr. Gordon.

[59] Ms. Johnston also acknowledged that she had seen Mr. Wickstrom's letter of July 16, 2004, to Mr. Urmson (Exhibit E-4). When asked if she received correspondence on union issues from Mr. Wickstrom she replied that she did.

[60] In reply, Ms. Johnston confirmed that she did not receive Exhibit E-4 until July 20, 2004. She also confirmed that she received Exhibit E-3 on July 20, 2004, although the decision to retain Mr. Steele was made on July 7, 2004.

[61] Ms. Briar is a registered nurse who has been employed with the CSC for approximately four years.

#### Briar's roster issues

[62] The complainant's testimony again paralleled Ms. Sabir's and Ms. Johnston's. To avoid repetition, I accept that her testimony is very similar, if not identical, as to the dates and events described above. The witness met with Mr. Steele on the morning of July 26, 2004, at an office located off the RTC site.

#### Briar's harassment issue

[63] Ms. Briar described her meeting with Mr. Richmond. On July 26, 2004, she, Ms. Johnston and Mr. Fransblow met with Mr. Richmond and Ms. Gaskell. She was presented with the same cover letter that had been given to the other complainants, which was signed by Mr. Hooper, advising her that a harassment complaint had been lodged against her by Ms. Falconer. She was also presented with a vetted copy of the harassment complaint. She stated that upon reviewing the complaint she was unable to discern any allegations made against her.

[64] Mr. Richmond informed her that she was to be temporarily reassigned until the matter was resolved. The institutions available to her were either Kent or Mountain Institution. She was then escorted off the RTC premises by Ms. Gaskell. Although she chose Kent Institution, she was informed the next day that she was being reassigned to Mountain Institution. She stated that she, not Ms. Johnston, had been trained as an infectious diseases nurse, yet Mr. Richmond decided to reassign her to Mountain Institution.

[65] She stated that, as per Mr. Richmond's memorandum, and the fact that she could not return to the RTC, it was her contention that "this was an attempt by Mr. Richmond to remove her from the RTC and out of the picture". By doing this, he left only one steward in the facility (Danielle Stonehouse Carrier) to represent the union's concerns with regard to the roster and the one-nurse on the evening shift issues, as the other stewards were absent.

[66] Ms. Briar received a copy of Mr. McCaffrey's final investigation report, which found that the allegations made against her were unfounded and vexatious. She stated that his report also implied that Ms. Gaskell had a plan to have the complainants removed from the RTC. Ms. Briar returned to the RTC in March 2005.

[67] In cross-examination, Ms. Briar acknowledged that she never met with Mr. Hooper or conversed with him over the telephone. She confirmed that Mountain and Kent Institutions are located side by side. She acknowledged that the terms and conditions of her employment give the employer the right to reassign her to different locations. She stated, however, that in her tenure at the CSC she never heard of a nurse being reassigned to a different location.

[68] Penny Sharp has been a registered nurse since 1986, and has been employed with the CSC for five years. She stated that the effect of management's decision to change from the 11.75-hour shift to the 7.5-hour shift resulted in poor morale, excessive sick leave usage, staff confrontations and confrontations with management.

[69] Ms. Sharp was not involved with the PIPSC as a steward prior to the complainants being removed from the RTC. On August 3, 2004, she wrote a letter to Lucie McClung, Commissioner of the CSC (Exhibit G-15). In her letter, she detailed the events that had occurred at the RTC with regard to the imposition of the 7.5-hour shift and having only one nurse on the evening shift. She also made it clear that the complainants had the full and unequivocal support of the nine nurses at the RTC, who also signed the letter. She indicated as well that she was now the spokesperson for the nurses at the RTC. Ms. Sharp noted that she never received a reply or acknowledgment from Ms. McClung's office.

[70] On August 14, 2004, Ms. Sharp wrote a letter (Exhibit G-16) to Don Head, the Assistant Commissioner of the CSC, describing the situation at the RTC. She also stated that, since Ms. Falconer was no longer at the RTC and would not return in the

foreseeable future, the three complainants, who were the voices of the nurses at the RTC, should be returned. She received no reply from Mr. Head.

[71] Ms. Sharp identified Exhibit G-17 as two letters from the PIPSC to Mr. Head. The first one, dated October 4, 2004, was from Michèle Demers, National Vice-President, and the second one, dated November 19, 2004, was from Isabelle Petrin, Employment Relations Officer. The letters voiced concerns about the nurses' issues at the RTC and management's failure to respond to them.

[72] On December 7, 2004, Mr. Head replied to Ms. Demers (Exhibit G-18), and Ms. Sharp received a copy of this response from her union representative.

[73] On December 16, 2004, a decision was taken by management to return to the 11.75-hour shift and to having two nurses on the evening shift.

[74] Ms. Sharp stated that it was her belief that Ms. Falconer was forced to file the harassment complaint against the complainants.

[75] In cross-examination, Ms. Sharp stated that it was her belief that Ms. Falconer was manipulated into filing a harassment complaint. When asked if she was making an assumption, she responded that she was and that it was an "educated assumption".

[76] In reply, Ms. Sharp stated that Ms. Falconer was manipulated, but not forced, into filing the harassment complaint.

[77] Heather East, a registered nurse since 1972, has been employed with the CSC for three years; Ms. MacKay has been employed with the CSC for eight years; and Balbinder Corra, a registered nurse since 1994, has been employed with the CSC for 10 years. They all gave evidence that has been covered by the complainants' testimonies.

[78] Harvinder Mahil is employed as a labour relations officer with the PIPSC Vancouver Regional Office. Mr. Mahil took on the RTC file in August 2004, when Mr. Wickstrom was hospitalized. He stated that Ms. Demers wrote to Mr. Head on October 4, 2004 (Exhibit G-17), to express the PIPSC's concerns about a perceived abuse of process and abuse of authority at the RTC. This was a follow-up to the letter sent by Ms. Sharp to Mr. Head that had gone unanswered.



[79] Mr. Mahil stated that removing the three stewards from their workplace in a public manner was viewed by the PIPSC as a serious matter. The PIPSC believed that the removal of their stewards was an element of intimidation by CSC management and that doing so left a vacuum of union leadership at the RTC.

[80] Mr. Mahil also stated that Ms. Falconer had left the RTC on long-term leave shortly after the final investigation report. Therefore, the three complainants should have been reassigned back to the RTC.

[81] In cross-examination, Mr. Mahil could not recall the exact date that Ms. Falconer left the RTC or when she returned. He was unaware that Ms. Falconer had written a letter to Mr. Wickstrom on July 1, 2004, and that it was after she received Mr. Wickstrom's reply that she filed her harassment complaint.

[82] As of 1997 Michael McCaffrey has been retained by the Department of National Defence, Department of Justice, the Canadian Human Rights Commission and private sector companies as a mediator and investigator in respect of harassment and human rights complaints. He was retained by the CSC to conduct an investigation following the harassment complaint filed by Ms. Falconer.

[83] He described the process that he uses when conducting an investigation, wherein he:

- clearly understands the mandate;
- receives a clear convening order;
- identifies any witness(es);
- contacts the respondent(s);
- contacts the complainant(s);
- interviews the respondent(s);
- interviews the complainant(s);
- develops a witness list;
- interviews the witness(es);
- investigates all relevant documents and does a site survey;
- sets the format for his preliminary report;
- submits a preliminary report; and
- provides a final investigation report to the coordinator, who then provides a copy of the final investigation report to the affected parties.

[84] The interviews are confidential, and the notes Mr. McCaffrey takes are initialled by the parties to confirm their accuracy and that proper procedures and protocols were followed. He stated that, once he renders his final report, “he does not express any further interest.”

[85] With respect to Mr. McCaffrey’s final report following his investigation of Ms. Falconer’s harassment complaint (Exhibit G-7), he clarified that paragraph 56 was documentary evidence that he had obtained and a verbatim reproduction of the email from Ms. Gaskell to Ms. Falconer.

[86] Mr. McCaffrey was referred by the complainants’ representative to Exhibit G-7, paragraph 124, stating that Susan Nolan, Chief of Health Services at Kent Institution, gave the following information during her interview:

*[124]. Witness Nolan stated that she was contacted in early Jul/04 by the RA Health Services, Pauline Lentinu who advised her that she would probably have to separate the three Respondents from RTC “because of the difficulty they were creating” Witness Nolan states that following an unrelated debrief to the Acting DC on Jul/21/04, Ms. Lentinu asked to speak privately with her. They went into Ms. Lentinu’s office and she was advised the Respondent(s) would be sent to other institutions and Kent would be getting one of them.*

[87] Mr. McCaffrey acknowledged that paragraph 137 of Exhibit G-21 reflects his conversation with Ms. Lentinu during her interview. Paragraph 137 reads as follows:

*[137]. Witness Lentinu was asked about discussions with Susan Nolan at Kent regarding Ms. Nolan taking one or more of the Respondents back. She stated that before the actual complaint was made, there was discussion involving the acting DC, Pauline Guenette and Doug Richmond regarding separating the parties. She states that it was her understanding that the Complainant did not wish to be moved as she “had not done anything wrong”. Witness Lentinu states that in the course of the same conversation, it was discussed that moving the three Respondent(s) would provide a “breather” for the hospital - meaning that at the time there were a number of individual grievances related to the roster, a good nurse had left the hospital and a number of requests for redeployment had been made.*

[88] In cross-examination, the witness stated that it was not part of his mandate to recommend any action to be taken by the CSC after his report was submitted. His report did not contain recommendations; it only detailed the full sequence of events. The witness was referred to paragraph 124 of Exhibit G-7, specifically the phrase that refers to the separation of the three complainants from the RTC “. . . because of the difficulty they were creating. . .” Counsel for the respondents stated that he did not see that phrase reflected in Ms. Nolan’s interview statement. Mr. McCaffrey agreed that it was not there; however, it was in an email Ms. Nolan sent to him on December 8, 2004 (Exhibit E-31). He stated that Ms. Nolan had read paragraph 124 in his presence and had initialled it as being an accurate reflection of the events.

[89] The witness acknowledged that the date in paragraph 132 of Exhibit G-7, in reference to a meeting held with Messrs. Urmson and Richmond, Ms. Lentinu, and Pauline Guenette, Regional Chief, Mediation and Anti-Harassment Coordinator, should have been July 22, 2004, rather than July 21, 2004.

[90] When asked by counsel for the respondents if during her interview Ms. Lentinu provided Mr. McCaffrey with any notes with regard to the date of her conversation with Ms. Nolan, he responded that she did not.

[91] The witness was referred to Exhibit E-31, the email that Ms. Nolan sent to him on December 8 2004:

. . .

*This is a follow up to our earlier conversation. Early in July (I’m sorry I do not have the exact date) Pauline Lentinu commented that she would probably have to separate three nurses from Pacific Institution because of difficulty they were creating. At that time, Pauline did not inform me that Kent Institution would have to accept any of these staff members. I remember thinking that this change would not affect me because two of these nurses had previously worked at Kent.*

*On July 21st, I had to debrief the Acting DC regarding the death by natural causes of a Matqui Inmate because I was part of the Investigation team assigned to this incident. Pauline was at this debriefing. When the meeting finished, Pauline asked me if she could speak with me. We went into her office, so she could speak privately with me. At approximately 1430, Pauline informed me that the three nurses from PI would be sent to other Institutions and*

*although, I was not informed as to who I would be getting, I would have to accept one of them.*

*If you require anything further, please do not hesitate to contact me.*

...

[92] The witness stated that he could not recall the exact date of “early in July” noted in Ms. Nolan’s email. When referred to paragraphs 181 to 183 of Exhibit G-7, he stated that he and counsel could disagree on his analysis and he could accept their differences of opinion. However, he believes his analysis to be accurate. The relevant passages from paragraphs 181 to 183 read as follows:

*[181]. The evidence is compelling in that there was an intention if not a plan to have the three Respondents removed from the workplace just days prior to the Complainant’s allegations being made. While it is not clear to what extent if any the Complainant knew this – the evidence clearly suggests her harassment complaint was used as a pretext to remove the same three people from the workplace. The evidence alone indicates that up to the point that the harassment complaint was made, the intention to remove the three Respondents from the workplace was limited to Witness Gaskell and Witness Lentinu with Witness Nolan playing a somewhat unwitting role.*

*[182]. Once the Complainant’s harassment complaint was made, Witness Richmond then became involved to the extent that he heard the initial verbal harassment complaint on Jul/13/04, later consulted with Pauline Guenette on Jul/21/04 and then took the written complaint to RHQ on Jul/22/04 to meet with senior staff on the issue. It is important to note that the day prior to Witness Richmond’s meeting with senior staff to discuss the issue – Witness Lentinu advised Witness Nolan that the Respondents were being removed from the workplace.*

*[183]. Returning for a moment to the DC’s specific criterion for separating parties to a harassment complaint – while it’s clear that Witness Richmond was not told that the Complainant had [REDACTED] leave pending and had already been moved to lessen her contact with two of the three Respondents, his deliberations on and decision to remove the three Respondents does not appear to have reflected the DC’s direction in the matter. The evidence clearly indicates that it was decided the Respondent’s would be removed from the workplace before they were consulted and there was no evident consideration being given to removing the*

*Complainant once she expressed she did not want to be moved. . . .*

[Sic throughout]

[Vetting in the original]

[93] Mr. McCaffrey agreed that it was not part of his mandate to investigate the “separating of the parties” issue. He also agreed that he did not believe Mr. Richmond was involved, and had no knowledge of Mr. Richmond being involved, in the “plan”, as stated in paragraph 181 of his final investigation report. Mr. McCaffrey acknowledged that he did not interview Mr. Hooper or Mr. Demers, and that his comments in paragraph 181 were not directed towards either of them.

[94] Since 1984 Ms. Guenette has occupied a number of positions at the CSC. At the relevant time, she was the Regional Chief, Mediation and Anti-Harassment Coordinator. She reported to Mr. Hooper, and her duties included interpreting and administering the CSC and Treasury Board mediation and harassment policies, as well as providing training and advice to management.

[95] Ms. Guenette was referred to the Treasury Board *Policy on the Prevention and Resolution of Harassment in the Workplace* (Exhibit E-33), which came into effect on June 1, 2001. She described the steps that are followed when a harassment complaint is filed at the CSC.

[96] The Regional Deputy Commissioner is the delegated authority to whom a written complaint is submitted. The complaint must include the nature of the allegations, the name(s) of the respondent(s), the reporting relationship of the respondent(s), and the date and a description of the alleged incident(s), and provide the names of any witnesses. Upon receipt of a complaint, the Regional Deputy Commissioner reviews it and, if it is determined that the allegations might constitute harassment, a vetted copy of the complaint is sent (to conform with the *Privacy Act*) to the parties concerned.

[97] One of the avenues of resolution is mediation. Ms. Guenette noted that the complainants in this case were offered mediation but that they declined. Since mediation was declined by the complainants, the next step was to proceed to an investigation of the harassment complaint. As noted earlier, Mr. McCaffrey was retained to conduct an investigation and submit a report.

[98] In referring to Exhibit E-34, the Treasury Board guidelines on *Dealing with Harassment: A Guide for Managers*, specifically page 17, which deals with “Separating the parties”, Ms. Guenette stated that the main reason the complainants and Ms. Falconer were separated was to reduce tension, to provide a healthy work environment and to avoid having their co-workers take sides. She went on to say that the criteria used by Mr. Richmond to determine the need to separate the parties were the seriousness of the allegations and the needs of the organization.

[99] Ms. Guenette referred to the notes (Exhibit E-36) that she took at a meeting held on June 24, 2004, with Ms. Gaskell and Ms. Lentinu. Her notes reflect that there were issues within the RTC that seemed to be dividing the nurses. As these were union-related, CSC management felt that it should not become involved, as this could lead to a complaint being filed against it pursuant to section 23 of the *PSSRA*.

[100] The witness referred as well to the notes (Exhibit E-37) that she took at a meeting held on July 13, 2004, with Mr. Richmond, Ms. Falconer and Bob Blakeway, an employee trained as a harassment assessor. The purpose of the meeting was to discuss issues within the RTC. Ms. Falconer was alleging that the complainants were poisoning her work environment, that a number of negative emails were being directed towards her, that she was not being advised of union-related issues, and that she was being ignored. According to the witness, Ms. Falconer stated that she had approached Mr. Wickstrom and that he had advised her that she should support the bargaining agent’s position with respect to the roster issue and having two nurses on the evening shift.

[101] At the meeting of July 13, 2004, Mr. Richmond raised the issue of separating the parties. Ms. Falconer indicated to him that she wanted to remain at the RTC. He advised her that, if she intended to pursue a harassment complaint, she needed to file it in writing.

[102] Exhibit E-38 consists of notes taken by Ms. Guenette on July 19, 2004, confirming that Mr. Richmond did receive a formal written complaint from Ms. Falconer.

[103] The witness referred as well to her notes of a meeting held with Ms. Gaskell and Ms. Lentinu on July 21, 2004 (Exhibit E-39). She indicated that Ms. Falconer had filed a formal complaint and that Ms. Gaskell was to review the need to separate the parties.

Ms. Gaskell and Ms. Lentinu believed that it might be difficult to reassign the nurses, as there were no vacancies in the region; however, there was the possibility of using them to assist with annual leave coverage in other institutions. Ms. Gaskell was informed by Ms. Falconer that she did not want to leave the RTC.

[104] Exhibit E-40 consists of Ms. Guenette's notes reflecting a telephone conversation she had with Ms. Lentinu on July 21, 2004, confirming that a number of nurses were unavailable to meet with Mr. Steele that day. Ms. Gaskell was directed by Ms. Lentinu to reschedule their meetings.

[105] Exhibit E-42 consists of Ms. Guenette's notes of a meeting held on July 21, 2004, with Maureen Hines, Senior Staff Relations Advisor, where she advised Ms. Hines that Mr. Richmond should meet with the four affected nurses and remain objective when completing his review of separating the parties to the harassment complaint.

[106] Exhibit E-43 consists of Ms. Guenette's notes following a telephone conversation on July 21, 2004, with Mr. Wickstrom, in which she advised him that she had spoken to Mr. Richmond and Ms. Gaskell about his request to have Mr. Steele meet with the nurses as a group rather than one on one. She also provided Mr. Wickstrom with Ms. Gaskell's telephone number so that he could confirm the date and time of the rescheduled meetings.

[107] Exhibit E-44 consists of notes taken by Ms. Guenette on July 21, 2004, reflecting that she had advised Mr. Richmond to meet with the parties to discuss the need to separate them.

[108] Exhibit E-45 is a letter sent by Ms. Guenette to Mr. Hooper on July 21, 2004, advising him of the harassment complaint filed by Ms. Falconer. She also informed him that "... he needs to review the need to separate the parties until this matter is resolved." She stated as well that removing any of the nurses from the RTC would raise operational concerns.

[109] Exhibit E-46 consists of Ms. Guenette's notes of a meeting held on July 22, 2004, at approximately 1:00 p.m., with Messrs. Hooper, Urmson and Richmond, and Ms. Lentinu. Ms. Guenette stated that Mr. Hooper wanted National Headquarters to be advised of Ms. Falconer's harassment complaint. Mr. Richmond addressed the need to

separate the parties and stated that, since the three complainants were part of the Health Cluster Unit, they could be relocated to different institutions if required.

[110] Later that same day, at approximately 4:00 p.m., Ms. Guenette sent Mr. Richmond an email attaching the criteria that CSC uses when considering separating the parties (Exhibit E-47) as approved by the Deputy Commissioner.

[111] Ms. Guenette stated that she was not present when Mr. Richmond met with the three complainants and made his decision to separate the parties. She stated as well that she had not advised Mr. Richmond as to whether or not he should separate the parties.

[112] In cross-examination, Ms. Guenette was referred to Exhibit E-8, the Convening Order and Terms of Reference that Mr. Demers signed appointing Mr. McCaffrey as investigator. When asked by the complainants' representative if she validated Ms. Falconer's complaint, she responded that she had reviewed the issues raised by Ms. Falconer and believed there were a number of issues that contributed towards a precarious and toxic workplace environment. She stated that it cannot be determined whether a complaint is unfounded or vexatious until the matter is investigated by a neutral third party.

[113] When referred to the Treasury Board *Policy on the Prevention and Resolution of Harassment in the Workplace's* step three, "Review of the complaint" (Exhibit E-33), Ms. Guenette stated that Mr. Hooper was the delegated manager who reviewed the complaint, as he was acting in Mr. Demers' position at the time. She also stated that management must deal with a complaint as soon as it is made aware of it.

[114] In accordance with her notes of June 24, 2004 (Exhibit E-36), Ms. Guenette stated that Ms. Gaskell and Ms. Lentinu described the RTC as a poisoned workplace. She also recalled that Ms. Falconer had mentioned that she had talked to Mr. Wickstrom about the issues between her and the complainants. She stated that Ms. Falconer had been unhappy with his response and had subsequently filed her harassment complaint.

[115] Ms. Guenette stated that she was unaware of any restoring relationship measures taken by management at the RTC after Mr. McCaffrey's final investigation report was received.



[116] She also stated that, based on her experience, it is not uncommon for management to restrict an employee's access to his or her workplace when the employee is temporarily relocated while management investigates a harassment complaint.

[117] Ms. Guenette noted that she had no knowledge as to whether Ms. Falconer was subject to disciplinary action following the final investigation report by Mr. McCaffrey in which he concluded that her complaint was unfounded and vexatious.

[118] Ms. Guenette noted that she made arrangements for a third party to meet with Ms. Falconer and the complainants to try to mediate the matter. Although Ms. Falconer was in agreement, the complainants were not.

[119] Ms. Guenette stated that Mr. Hooper received the harassment complaint and decided that there was no need to seek additional information from Ms. Falconer, as he felt that there were enough allegations to substantiate the alleged harassment.

[120] Mr. Richmond began his career with the CSC in 1973. In April 2003 he became the Deputy Warden of the Pacific Institution and the RTC. He reported to the Warden, John Costello. He replaced Dr. Gordon from on or about July 13 to 27, 2004, as Executive Director of the RTC. Mr. Richmond has since retired from the CSC.

[121] According to Mr. Richmond, Ms. Falconer and Mr. Blakeway met with him and Ms. Gaskell on July 13, 2004, at approximately 9:30 a.m. Ms. Falconer advised him that she was being harassed by the three complainants. She stated that she was the recipient of negative emails, and that she was being shunned and treated in a confrontational manner by the complainants. As well, Ms. Falconer felt that the union executive was contributing to the harassment, as Mr. Wickstrom had yelled at her when she discussed the roster issue with him. Ms. Falconer was given time off work (three days) to draft her complaint in writing. At approximately 11:45 a.m. that same day, Mr. Richmond contacted Ms. Guenette to advise her that he would consider separating the parties if he received an official written complaint from Ms. Falconer.

[122] Although Ms. Falconer's complaint was filed on July 16, 2004, Mr. Richmond only received it on July 19, 2004. He reviewed it to determine that it reflected what she had told him on July 13, 2004. He then contacted Ms. Guenette and Ms. Hines to discuss the complaint and the guidelines in respect of separating the parties.

[123] On July 21, 2004, Mr. Richmond again spoke with Ms. Guenette. She advised him that he should only meet with the parties involved in the harassment complaint once the memorandum from Mr. Hooper and a vetted copy of the complaint were ready.

[124] On July 22, 2004, at approximately 11:00 a.m., Mr. Richmond briefed Mr. Urmson on the harassment complaint submitted by Ms. Falconer. At approximately 3:00 p.m., he and Mr. Urmson briefed Mr. Hooper. They discussed the need to separate the parties and the operational impact this would have on the RTC. The possibility of other institutions accommodating the separated parties was discussed. However, the wardens of those institutions had to be contacted to see if there were vacant positions. Mr. Richmond requested Mr. Hooper's approval to contact the wardens, which was granted.

[125] After the meeting with Mr. Hooper, Mr. Richmond called the wardens of Kent, Mission and Mountain Institutions to discuss temporarily reassigning the parties to the complaint. Each warden agreed to accept one nurse.

[126] On July 23, 2004, at approximately 10:25 a.m., Mr. Richmond met with Ms. Falconer and Mr. Kereliuk. Mr. Richmond raised the issue of separating the parties and he read the guidelines for this to Ms. Falconer and Mr. Kereliuk. Ms. Falconer advised Mr. Richmond that she did not want to be relocated because of the financial implications it would have on her. Mr. Richmond advised her that he would consider her request, but that he would first meet with the three complainants.

[127] That same day, at approximately 10:45 a.m., Mr. Richmond and Ms. Gaskell met Ms. Sabir, who was accompanied by Ms. MacKay. Ms. Sabir was provided with a copy of Mr. Hooper's memorandum (Exhibit E-2) and a vetted copy of Ms. Falconer's harassment complaint. The issue of separating the parties was raised, and Ms. Sabir indicated that she felt it was unnecessary. Mr. Richmond advised her that she would be temporarily reassigned to Mission Institution as of July 26, 2004. He offered Ms. Sabir the opportunity to comment on his decision, but she declined.

[128] On July 26, 2004, at approximately 8:45 a.m., Ms. Gaskell informed Mr. Richmond that Ms. Johnston and Ms. Briar would be attending a meeting with Mr. Steele at 10:00 a.m. that day.

[129] At approximately 3:00 p.m., Mr. Richmond met with Ms. Briar and Mr. Fransblow. Shortly thereafter, Mr. Richmond met with Ms. Johnston and Mr. Fransblow. He provided both complainants with Mr. Hooper's memorandum and a copy of the vetted harassment complaint filed against them by Ms. Falconer. When the issue of separating the parties was raised, Ms. Briar indicated that Kent Institution would be her preference and Ms. Johnston indicated Mountain Institution as her choice.

[130] On July 27, 2004, after discussing the matter with the chiefs of Health Services at both Kent and Mountain Institutions, Mr. Richmond informed Ms. Briar that she would be temporarily reassigned to Mountain Institution, and advised Ms. Johnston that she would be temporarily reassigned to Kent Institution.

[131] Mr. Richmond testified that he made the decision to temporarily reassign the complainants after meeting with them on the day of their respective interviews. His decision to allow Ms. Falconer to remain at the RTC was based on her financial concerns, her number of years at the facility and her support group at the RTC.

[132] Mr. Richmond explained that his memorandum to the complainants restricting their access to the RTC and Pacific Institution was normal practice when separating the parties involved in a harassment complaint. He noted that his memorandum stated that, if they required access to either the Pacific Institution or to the RTC, authorization could be granted. He stated that he rescinded the order on January 21, 2005.

[133] Mr. Richmond testified that he had seen a summary of Mr. McCaffrey's final investigation report in which Mr. McCaffrey concluded that Ms. Falconer's harassment complaint was unfounded and vexatious. He stated that he was unaware if any disciplinary action was taken against Ms. Falconer, as any such action would have been taken by her supervisor.

[134] In cross-examination, Mr. Richmond denied that temporarily reassigning the three complainants to different institutions was a deployment, as suggested by their representative. Mr. Richmond stated that it was a temporary reassignment to conform to the guidelines dealing with separating the parties. Separating the complainants was an option. As per their terms and conditions of employment, and as part of the Health Cluster Unit, they could be moved to different locations. He noted that in the past, on

three or four occasions, he had temporarily reassigned personnel named in harassment complaints. He conceded, however, that none of them were nurses.

[135] Mr. Richmond stated that, although he was aware of the other issues the nurses had raised (the roster and having two nurses on the evening shift), they were Dr. Gordon's responsibility. He stated that his involvement was only with the harassment complaint. He noted that he was only acting as Executive Director, and any outstanding long-term issues had to be dealt with by Dr. Gordon.

[136] Mr. Richmond denied having any knowledge of Ms. Falconer's absence from the RTC in August, September and October 2004. He noted that he was responsible for over 200 employees and he was not aware of when they scheduled their leave.

[137] Mr. Richmond indicated that his decision to reassign the complainants was taken at the meeting he had with them. He based his decision on their discussions, the interests of the RTC, the parties involved and the seriousness of the issues raised by Ms. Falconer in her complaint. He stated that he also took into consideration Ms. Falconer's emotional state as a result of being shunned by the complainants, the financial concerns she raised, Mr. Wickstrom allegedly yelling at her, and the negative emails that she received, which she described both in her verbal and written complaints. He stated that he made the decision to separate the parties even though he knew it could cause operational difficulties.

[138] Mr. Richmond also stated that he first considered separating the parties when he received Ms. Falconer's written complaint. He also stated that he was never advised or ordered by either Mr. Demers or Mr. Hooper to separate the parties. The decision was his alone.

#### Summary of the arguments

[139] The parties' written arguments are reproduced here in full.

[140] The complainants' written arguments read as follows:

...

*1. The issue, as Ms Briar, Ms Johnston, and Ms Sabir, saw it was, from the outset, an issue involving safety of patients, safety of their practice, for which they are accountable to their licencing body, (now) the College of Registered Nurses*

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of British Columbia, and safety of themselves, working as they did, in a high risk Correctional setting.

2. This was clearly demonstrated through the testimony of nursing colleagues during the Hearings on this case and also consistently through documentary evidence which appeared throughout this troubled period from 24 February 2004 (G-11) to 27 August 2004 (G-16). Throughout this period, nurses conducted themselves in an exemplary fashion, never losing sight of the issue that was important to them, but unflinchingly treating their adversaries cordially and with respect. The consistency of the approach and the argument follows throughout G-1, G-3, G-5, G-2, and G-15.

3. The presentation of the issue was not met in kind by the Correctional Service. The Nurses described a workplace which was not prepared to discuss the concerns they raised, fundamental as they were, but rather sought to suppress them. Documentary evidence abounds that this suppression took the form first of threats and then actuality of inconvenient and awkward shift schedules (G-1), (G-5), (G-15)

4. By April, issues began to escalate, and the nursing staff of the medical hospital elected stewards Eva Sabir and Sandra Johnston as their spokespersons in early April and so notified Correctional Services (G-7, Para 50)

5. The nurses, while at all times adhering to the view that the night shift, which was the shift in contention, required two nurses on nights, when the Correctional Services suggested that one nurse on nights was sufficient, the nurses responded by asking for a competent authority to review the situation. This is a sign of a reasonable group of employees, not one which was determined to get its own way, no matter what.

6. The action continued to escalate and on 10 May, Correctional Services imposed a 7.5 hour per day, 7-3, 7-4 schedule on nurses in the medical hospital. Perhaps they thought that the nurses would have dropped their insistence on more than one nurse on nights, to prevent the imposition, but that is speculative on my part. The reality is that the plan was so hastily thrown together that there were gaping holes. (G-2, page 6). This led to intense grievance activity. After close to a hundred grievances had been lodged, the nurses of their own volition imposed a moratorium on further schedule related activity and the grievances ceased. There had been enough.

7. On 19 May, the Regional Union Management Consultation Committee met for the first time since the imposition of the 7.5 hour schedule. At the meeting (G-2), the nurses raised again their request that a competent authority review the matter of "one nurse on the night shift". Although the

Professional Institute was not informed as to decisions taken, Correctional Services Officials met on or about 2 June, and made a decision to accede to the request (G-22pp210-211). The nurses remained in the dark. At this meeting, the Registered Nurses Association of BC (as it was then known) was identified as a potential “competent authority” to conduct a review. In the event RNABC declined, a former employee of RNABC, Morrie Steele, was identified as an alternate choice. In the event, the RNABC did decline, and on 5 July, Morrie Steele undertook the project (G-22pp210-209) The nurses remained uninformed.

8. At the same time, in the Hospital itself, on 21 June, nurse (and steward) Sue Falconer, (who would shortly become the “complainant” (though, not in the meaning of this process) in the developing scenario) suggested a possible mixed schedule with an 8 hour night shift and 11.75 days and evenings (G-7-para 53) on 24 June this suggestion brought an e-mail response from Pam Briar, which is quoted (G-7 para 54.

10. What happened then is a bit out of the ordinary in that Sue Falconer developed a draft text of a response to Pam Briar and forwarded it to Debra Gaskell, Chief of the Medical hospital, and Lisa Krenus, Associate Chief, for comment (G-21 para 57). Chief Gaskell responded and advised on how the response could be embellished (G-21 para 58) and Falconer adopted the suggestions. This is clearly coaching and as the message had to do with an issue of contention between the Stewards, representing the nursing staff and who had been chosen to be spokes persons, and the Manager who was in charge of the Medical Hospital, Chief Gaskell was conflicted. Her involvement in what was clearly a communication aimed at nurses was inappropriate and suggests interference. The communication was sent to all staff nurses on 30 June. Nurses receiving the communication would identify it as a communication from Falconer, not one from Chief Gaskell (G-21 para 59), It contains news that the RNABC has declined the invitation to conduct a risk assessment, and also” The letter from Falconer/Gaskell identifies the author as a PIPSC steward.

11. This e-mail came to Eva Sabir, as she was part of the “all staff nurses” and she reacted to on 2 July, as described in (G-6) explaining that as one of the designated representatives at the table she was aware of no such position on the part of the Deputy Commissioner, and further she was not aware of any such response from RNABC. This communication went to the same distribution list as the Falconer/Gaskell communication had. This response was to be significant in what followed.

12. On 21 July Morrie Steele arrived at the Regional Treatment Centre to begin his assessment. The staff were not prepared for him and no interviews were conducted that day (E-40). The Regional Administrator, Health Services was concerned as, according to her, Steele had only a month to complete the project (E-39)

13. It was agreed that Morrie Steele return on Monday, 26 July, and meet first with nursing staff as a group, to explain his mandate and his process, and his inquiries proceeded smoothly thereafter.

14. On the 13 July, Sue Falconer and Debra Gaskell approached Doug Richmond, the acting Executive Director, of the Regional Treatment Centre and Falconer complained of harassment, alleging that there was a poisoned work environment. At this meeting, Doug Richmond considered apparently for the first time, the issue of separating the parties. He advised Falconer that he wanted a written complaint, (E-37)

15. By 21 July, Doug Richmond had the written harassment complaint he had asked for. Susan Falconer had been given time off work to draft it. Debra Gaskell informed the Regional Administrator of Health Care that the complaint had been received and that Gaskell now needed to consider separation of "the parties" (E-39). The complaint named Pam Briar, (G-20 para 9) Sandra Johnston,(G14 para 9) and Eva Sabir as having harassed her by creating a toxic workplace characterized by bullying, intimidation, and isolation. The complaint went on to make a second allegation against Eva Sabir articulate a second allegation against Eva Sabir, that Eva Sabir sent an e-mail to co-workers that "cast suspicion upon her actions and damaged her reputation in the eyes of co-workers" (G-7 paras 9 and 10). This latter was Eva Sabir's reply, to the same distribution list the Falconer/Gaskell e-mail had been sent to on 30 June.

16. On 21 July, Pauline Guenette, the regional advisor on harassment was advising Doug Richmond to discuss with "the parties" the issue of separation. (E-44)

17. On Friday 23 July, Eva Sabir was summoned to the Doug Richmond's office and informed that there was an allegation of harassment against her from Sue Falconer, and that on the subsequent Monday morning, she was to report to Mission Institution. On Monday the 26<sup>th</sup> July, the same followed for Sandra Johnston and Pam Briar, who were "re-assigned" to Kent Institution and Mountain Institution, respectively (despite each having requested the other's assignment)

18. Eva Sabir and Sandra Johnston were the spokes persons for the nurses on the matter of the night shift coverage, so very little imagination is required to speculate why they were chosen. Pam Briar had been designated by Eva Sabir as early as 28 May as Eva Sabir was required to be away from the Regional Treatment Centre urgent family business. So little imagination is required to speculate why she was chosen. From Friday, 23rd to Monday 26<sup>th</sup> July the leadership on the issue of staffing on the night shift was assigned to other facilities. Other leaders emerged in the aftermath, but they hadn't yet.

19. The other possibility is that the three were engaging in harassing behaviour and the action taken was appropriate. Given the nature of the allegations, it perhaps takes a little more imagination to speculate on why the three were chosen. Much of the material contained in the complaint (E-21), (E-14), (E-2) deals with missing pens, for example, but without naming who may have taken them, there is discussion on differences as to how the 7.5 hour shift schedule might be handled, complete with disagreements noted, but nothing that a reasonable person might identify as harassment, and the material does not explain why it should.

20. That the e-mail that Eva Sabir had sent on 2 July (G-6) in reply to the Falconer/Gaskell e-mail could have been treated as an allegation of harassment remains absolutely mystifying and speaks only perhaps to the lengths the Correctional Service was willing to go to create a pretext to allow the leaders to be moved.

21. On 16 August, 9 of the nurses wrote concerning the issue to the Commissioner of Corrections and voiced their concerns (G-15). When this letter brought no response, Penny Sharp, by who by now had volunteered to become an institute Steward, wrote again and among other things, advised that the complainant was no longer in the workplace (her presence had been the "reason" why the others had to be elsewhere) and not expected to return in the foreseeable future.(G 16 second page "page 3")

22. Only the three were sent away, they were the visible leaders. Yet others were identified by the complainant, but at this time they had not yet become Stewards (G-21 para 34)

23. In reality, the harassment issue was never a real issue. It's sole purpose was to detract from the real issue-the issue of safety of patients, safety of practice, safety of self which had always been the issue, and on the same day Sandra Johnston and Pam Briar were being expelled from the Regional Treatment Centre, and sent into exile, Morrie Steele arrived to commence his assessment.



24. From the first suggestion of harassment, it became a word joined with the phrase “separation of the parties” and that was the real agenda.

25. The evidence from the Correctional Service was clear that their approach to harassment was devoid of any test for probable cause or reasonable grounds. Rather the approach of the Correctional Service seems to be “let’s see if an investigator can make anything of it” with no further analysis of the allegation. The prima facie test used by the Canadian Human Rights Commission is not used either.

26. Despite the lack of specifics in the allegation against all three, and the relation of the Eva Sabir e-mail response to the Falconer/Gaskell e-mail on 2 July to the harassment policy of the Treasury Board, the complaints against Eva Sabir, Sandra Johnston, and Pam Briar were investigated. Mediation had been offered and declined. The results of the investigation showed not only were the complaints against the three not upheld, they were found to have been made in bad faith and to have contained such untruthful claims so as to be vexatious. (G-7 paras 184, 185, 186, 187) (G-14 paras 185, 186) (G-20 paras 195, 196)

27. The investigator concluded, following an extensive investigation, with full co-operation from the Correctional Service, “The evidence is compelling in that there was an intention if not a plan to have the three Respondents removed from the workplace just days prior to the complainants allegations being made. While it is not clear to what extent, if any, the complainant knew this—the evidence clearly suggests her harassment complaint was used as a pretext to remove the same three people from the workplace....”(G-14 para 182) (G-7 para 183) (G-20, para 192)

28. The investigator also observed the following “...there was both structure and an emerging strategy on the union’s part which included designated stewards who were to represent the members. There is no evidence that the complainant was at any time considered to be speaking for the members. The complainant was aware that her subsequent efforts regarding the roster were being viewed by her peers as attempting to further management goals in the matter. This perception put her in direct conflict with her union’s strategy in the matter, and each of her peers that saw value in the unions approach. (G-20 para 169

29. Penny Sharp, a nurse in the Medical Hospital described a similar conclusion to acting Commissioner Don Head in her letter of 1 September (G -16)

"We understand the reason for removing our 3 colleagues from the workplace was to separate the parties from each other due to a harassment complaint. The person I saw write the complaint is no longer in the workplace, and not on the roster in the foreseeable future. Why then would our desperately needed staff not be returned? We believe that the reason they were removed initially was to publicly punish them and bring the rest of the staff into line.....Management has been heard to say that with the removal of the Union Stewards, the line staff would quickly crumble and agree to a 12 hour shift rotation with one nurse on nights. I believe this shows a distinct lack of understanding of the issues.....

*30. Meantime, Morrie Steele has been carrying out his project. On 20 August he submitted a report containing seven recommendations (G-8). The last recommendation is most telling. It reads Two nurses should be scheduled to work night shift until Recommendations !-6 have been implemented.*

*He provided the following rationale*

Registered nurses must meet the RNABC Standards for Registered Nursing Practice in British Columbia (2003). If the first six recommendations are implemented, then conceivably, nurses will have the necessary supports and structures in place to provide safe and competent care while working alone on the night shift

*31. Today the three exiled stewards have returned and are back at the Regional Treatment Centre. Two nurses are scheduled to work night shift. Sue Falconer, who complained of harassment is at Fraser Valley Institution, co-located with the RTC on the Matsqui grounds, Debra Gaskell left the RTC and is now the national Co-ordinator for the Correctional Service infectious disease program. Doug Richmond is retired. There are still problems in Health care in the RTC and elsewhere. The issues are much the same. Not enough people to do what is required.*

*32. Except for Doug Richmond who made the decision to send the three away, the other two named respondents are respondents only because each was the senior line officer, and therefor sat in the chair where the buck stops at critical moments. If each had made different decisions at critical moments, the events recounted in previous pages would not have occurred and we would have got where we got to with a lot less grief. We got there any way.*

[Sic throughout]

[141] The respondents replied as follows:

...

**Argument**

143. Sections 23, in combination with Sections 8 and 9 of the PSSRA are/were for the protection of the bargaining agent. This concept has been upheld by this Board and the Federal Court. The cases supporting this position are set out above, but most recently by Board Member Guindon in the 2004 decision of **Cloutier and Leclair**. The fact that nurses Sabir, Johnston and Briar were PIPSC stewards is not sufficient to get over the hurdle that these sections protect the bargaining agent. There was no evidence that these complainants were duly mandated to file a complaint alleging a violation of the bargaining agents rights, or were acting on the bargaining agent's behalf.

**Cloutier v. Leclair, at paras 145-150.**

144. Further, for these complaints to be successful under section 23 of the PSSRA, the union must prove on a balance of probabilities that one of the Respondents, Richmond, Demers, and Hooper failed to observe a prohibition contained under sections 8 and/or 9.
145. The act that appears to give rise to the complaint is the movement of the three Complainants, Sabir, Johnston and Briar from the Medical Hospital at RTC, to Mission, Mountain and Kent institutions, by D. Richmond in late July of 2004, in the process of a harassment investigation.
146. The evidence was that the Respondent Demers was away on vacation at the time the harassment complaint was filed and the separation of the parties took place. There is absolutely no evidence that the Respondent Demers was involved in the decision making process nor did he take any action which could fall within the prohibitions contained in Sections 8 and 9 of the PSSRA.
147. All three of the Complainants Sabir, Johnston and Briar were employed as NU-03s. Their location of employment is the Health Unit Cluster. The offers of employment to all three indicated clearly and unequivocally that by accepting the offer of employment, it is understood that as part of your duties, you may be required to work in different sites or locations in the Pacific Region.

148. *All three complainants understood this. While in other situations, with other employees, the movement of a person from one work location to another may be seen as a breach of the terms and conditions of employment or a breach of a collective agreement, or potentially a deployment, however in this situation, the work location of all three of these nurses was the “Health Unit Cluster” which required them to work at any facility in the region.*
149. *The specific complaint is not just the movement of the three Complainants Sabir, Johnston and Briar from the Medical Hospital at RTC, to Mission, Mountain and Kent institutions, but in particular such to cause them to miss an important meeting on July 26, 2004, of which they were all to play an integral role. However, the evidence, as set out, clearly indicates that both nurses Briar and Johnston were aware of the July 26 meeting and attended that meeting. Indeed, nurse Briar indicated she had a further meeting with Morrie Steele after July 26, 2004.*

**Sabir Complaint, Appendix A;  
Johnston Complaint, Appendix B;  
Briar Complaint, Appendix C.**

150. *Nurse Sabir’s evidence was that she was “unaware” of any meeting on the 26<sup>th</sup> of July with Morrie Steele, however a meeting with Mr. Steele was arranged by nurse Sabir’s own evidence, by Ms. Gaskell or Ms. Krenus.*
151. *Finally, Doug Richmond, in his evidence, clearly stated that his meetings with nurses Johnston and Briar on July 26, 2004, were to be scheduled in such a manner to permit them to attend the Morrie Steele meeting.*
152. *The evidence was that the Respondent Hooper was the Acting Deputy Commissioner at the time the harassment complaint was filed and the separation of the parties took place. Mr. Hooper’s involvement was minimal. The evidence of his involvement consisted of the following:*
1. *Under cover of letters dated July 21, 2004 sent to each of the Complainants Sabir, Johnston and Briar, he advised them of the Harassment Complaint that was filed against them; advised them of the process and protocol’s involved; and attached a copy of the vetted complaint;*
  2. *He received briefing’s both orally and in writing at the early stage on July 21, and 22, 2004;*
  3. *He met briefly with union officials after the Complainants Sabir, Johnston and Briar had been temporarily moved out of the medical hospital;*

153. *It was the evidence of the three Complainants that none of them ever met with the Respondent Hooper. The Respondent Hooper did not advise, or instruct the Respondent Richmond on his course of action, with respect to the separation of the parties.*
154. *There is absolutely no evidence that the Respondent Hooper did any act, which could be construed as violating the prohibitions contained in Sections 8 and 9 of the PSSRA.*
155. *Therefore the specific complaint that the actions of these Respondents took steps to breach section 23 by keeping these nurses from this important meeting is unproven. In fact two of the three attended the meeting and the other one didn't know it was going on, however did subsequently attend a meeting, which was arranged by management representatives.*

***Response to the Union's Representations received March 6, 2006.***

156. *With respect to paragraphs 1 and 2 of the Union's submissions, and notwithstanding the Employer's submissions that the issue of 'safety' as characterized by the Union was actually being dealt with by the appointment of an 'independent consultant' (Morrie Steele), with respect, the proper forum is not a section 23 complaint. There are other more appropriate mechanisms for dealing with issues of safety in the workplace which would have and could have dealt with a safety issue namely Part II of the Canada Labour Code ("CLC").*

***Canada Labour Code (R.S., 1985, c. L-2), s. 128.***

157. *Subsection 128 of the Canada Labour Code provides for the refusal to work if there is a danger. It states:*

***128. (1) Subject to this section, an employee may refuse to use or operate a machine or thing, to work in a place or to perform an activity, if the employee while at work has reasonable cause to believe that***

***(a) the use or operation of the machine or thing constitutes a danger to the employee or to another employee;***

***(b) a condition exists in the place that constitutes a danger to the employee; or***

***(c) the performance of the activity constitutes a danger to the employee or to another employee.***

***Canada Labour Code (R.S., 1985, c. L-2.***

158. With respect to paragraph 3 of the Union's submissions, again, the Employer addressed this concern with the appointment, at the Union's request of an independent consultant (Morrie Steele) and undertook to make **no** changes to the roster until **after** that review was complete and the report issued A/ADC Urmson made this undertaking to the Union Representative Norm Wickstrom in correspondence dated July 7, 2004 (EX E-3).

**Ex. E-3, Urmson letter to Wickstrom dated July 7, 2004.**

159. Further, with respect that there were threats, there was absolutely no evidence that any of the three Respondents Richmond, Hooper, or Demers were involved in any of these alleged "threat" activities.

160. With respect to paragraphs 4 through 10, of the Union's submissions, what is clearly being stated is that there is a disagreement over shift schedules. This is a matter that is clearly governed by sections 7 and 11 of the Financial Administration Act, which retain for the Treasury Board as Employer to act for the Queen's Privy Council for Canada on all matters relating to:

1. General Administrative Policy in the Public Service of Canada;
2. The organization of the Public Service of Canada or any portion thereof, and the determination and control of establishments therein;
3. Personnel management in the Public Service of Canada, including the determination of the terms and conditions of employment of persons employed therein;
4. Determine the requirement of the Public Service with respect to human resources and provide for the allocation and effective utilization of human resources within the Public Service;
5. Determine and regulate the pay to which persons employed in the Public Service are entitled for services rendered, the hours of work and leave of those persons and any matters related thereto.

**Financial Administration Act, (R.S. 1985, c. F-11), s. 7, and s. 11.**

161. With respect to paragraphs 14 and 15 of the Union's submissions, this is clearly a misrepresentation of the evidence. The only evidence given on this matter was that of Doug Richmond. The submission of the union insinuates that there was something nefarious in Mr. Richmond's request to

have the complaint put in writing, and that there was some underlying hidden agenda, when clearly his evidence was that he was faced with a complaint and that he had to follow the proper procedures. Bear in mind that Mr. Richmond was merely in the Acting Executive Director's position while Dr. Gordon was on annual leave. When not in this position, his substantive position was as Deputy Warden of the PI. He had no line authority for this facility. Any long-term staffing issues were not of concern to him.

162. With respect to paragraphs 18 and 19 of the Union's submissions, this is nothing but speculation. In fact, in its submission, the Union uses the words speculation and imagination. The Union wishes for the Board to speculate that there was some form of conspiracy afoot, to remove nurses Briar, Sabir and Johnson. Speculation and imagination cannot replace the requisite of evidence. The Federal Court and this Board have time and time again made it perfectly clear that there is a burden in these types of cases and that burden is on the complainant that is alleging the breach of section 23, to lead evidence that this is the case.

**SSEA v. Canada [2004] F.C.J. No. 741 (FCA) at paras 51-54.**

163. With respect to paragraph 19 of the Union's submissions, there is no evidence as to what a "reasonable person" might consider harassment. The only evidence given with respect to the interpretation of the harassment policy was that of Ms. Guenette, the Regional Chief of Mediation and Anti-harassment Co-ordinator. As Ms. Guenette testified, and as the harassment policy clearly states, harassment is defined as conduct that is directed at and offensive to another person. While after the investigation it was determined that there was no harassment, the conduct itself, if found to have occurred could have been harassment.
164. With respect to paragraph 20 of the Union's submissions, the Union is suggesting that the 'Correctional Service' will go to certain lengths to create a pretext to remove the 'unions' leaders. Again, while this may be the Union's theory of the case, again there is absolutely no evidence in this regard. Indeed, while the witnesses called on behalf of the Complainants suggested, alleged and insinuated that there was some form of 'plan' to move these three,
1. there is no evidence of this,
  2. there is no evidence that the Respondents to this complaint, Messrs Richmond Demers and Hooper were in any way involved in this issue of the night shift; and

3. *the Employer, as a term and condition of these three nurses employment, could move them to any institutions anywhere in the region, which included the Institutions to which they were moved.*
163. *With respect to paragraph 25 of the Union's submissions, the Union disregards the fact that Ms. Falconer was:*
1. *a nurse and co-worker of Sabir, Johnson and Briar;*
  2. *not in a managerial, confidential or excluded position;*
  3. *an elected PIPSC steward;*
  4. *had complained to PIPSC about this matter, specifically to Mr. Wickstrom, prior to filing her complaint.*

***Ex. G-7, Final Harassment Report (Sabir) at paras 64-65;  
Ex. G-14, Final Harassment Report (Johnston) at paras 97-98;  
Ex. G-20, Final Harassment Report (Briar) at paras 67-68;  
Evidence of D. Richmond January 11-12, 2006.***

164. *With respect to paragraph 27 of the Union's submissions, although this statement was contained in the Final Harassment Reports, the only evidence as to what this means was reviewed in detail with Mr. McCaffrey in his cross-examination. His only recollection and evidence of this were statements made by S. Nolan and P. Lentinu, which were hearsay. Mr. McCaffrey did not further investigate their statements by making enquiries of D. Richmond, P. Lentinu, P. Guenette, the A/ADC or the A/DC who were at these meetings. Nor did McCaffrey review Richmond or Guenette's notes which verify that several meetings and discussions took place on July 21 and July 24, 2004, which involved these parties. Indeed between July 21 and July 24, 2004, the following occurred:*
1. *July 21, 2004, Pauline Guenette had:*
    - a. *2 telephone conversations with P. Lentinu*
    - b. *2 telephone conversations with N. Wickstrom*
    - c. *1 telephone conversation with Maureen Hines, Sr. Staff Relations Officer*
    - d. *1 telephone conversation with D. Richmond*
    - e. *wrote a briefing note to the A/DC*
  2. *July 22, 2004, there was:*
    - a. *a meeting involving D. Richmond, P. Guenette, P. Lentinu and the A\ADC;*
    - b. *a meeting involving D. Richmond, P. Guenette, P. Lentinu, the A/ADC and the A/DC;*



- c. *an e-mail from Guenette to Richmond briefing him on separating the parties;*
3. *July 24, 2004:*
    - a. *P. Guenette had a meeting with P. Lentinu and D. Gaskell.*

*It is entirely possible that Lentinu and Nolan were mistaken in their recollection of when they spoke, given that:*

1. *neither had made notes of the event;*
  2. *their discussion was with McCaffrey some 5-6 months after the events;*
  3. *they were not directly involved in the matters;*
  4. *contradictory documentation existed that may have been used to refresh their memory and was not.*
165. *Further with respect to paragraph 27, this statement was put to him in cross examination and he was directly asked if he was suggesting that any of Messrs Richmond, Demers, and Hooper, were the subject of this statement, and his answer was to the effect that there was not any evidence that he was aware, the only evidence was the statement of Lentinu and the email from Nolan. At best what we can take from this is that if there was any plan it did not in any way shape or form involve any of the three Respondents.*

***Cross-Examination of M. McCaffrey January 10, 2006.***

166. *The Correctional Service is not a Respondent to this complaint. Indeed it would be inappropriate to name the CSC as a Respondent, and this Board (or its predecessor) has always ruled that for a section 23 complaint, the action/activity complained of has to be that of a person in a 'managerial or confidential' position. What has to be proven in this case is that the 'named' Respondents were involved in this 'plan'. There has been no such evidence.*
167. *Finally, while all 3 complaints name specifically Messrs Richmond, Hooper, and Demers, they do not name the Correctional Service of Canada, however the relief requested is not as against these individuals but as against specifically the Correctional Service of Canada. This is an obvious flaw with the complaints and the theory. If the Respondents were found to have taken certain steps that were inappropriate, the relief should have been requested as against those Respondents, and not the CSC.*

**PART V – ORDER REQUESTED**

168. *The Respondents respectfully request that the complaints be dismissed.*

[Sic throughout]

[142] Counsel for the respondents submitted the following case law: *Social Science Employees Association v. Canada (Attorney General)*, 2004 FCA 165; *Cloutier v. Leclair*, 2006 PSLRB 5; *Liberty v. Potts*, PSSRB File No. 161-2-801 (1997) (QL); *Rainville v. Dingwall*, PSSRB File No. 161-2-789 (1996) (QL); *Day v. Blattmann*, PSSRB File Nos. 161-2-809 and 810 (1999) (QL); *Jackson v. Séguin*, PSSRB File No. 161-2-399 (1987) (QL); *Chopra v. Canada (Health Canada)*, PSSRB. File Nos. 161-2-858 and 860 (1998) (QL); and *Public Service Alliance of Canada v. Little*, PSSRB File No. 161-18-803 (1996) (QL).

[143] The complainants' reply arguments read as follows:

...

1. *This case is a simple case. The complainants, who at all times had the support of the Bargaining Agent lodged their complaints on forms prescribed by the Public Service Staff Relations Board in what they understood to be the prescribed method.*

2. *They named respondent Hooper because he was acting as the senior line officer in the region at the time the disputed action was taken by management, and therefore is responsible. Respondent Demers was named because he was (and is) the incumbent Deputy Commissioner and had the authority to undo what had been done and did not. He held the senior responsibility in the region and is therefore responsible. Doug Richmond was named as at the time he was acting with the authority of the Executive Director of the Regional Treatment Centre. He took the disputed action, and therefore is responsible.*

3. *The evidence clearly showed a dispute between the Registered Nurses at the Regional Treatment Centre's Medical Hospital concerning the staffing of the night shift in the medical hospital. The concern of the Registered Nurses was that the staffing was not safe for their patients, was not safe for their practice, and not safe for themselves.*

4. *Evidence was introduced which showed that they had raised their concerns to management, without result. It is worth reminding that the Registered Nurses behaved with absolute propriety throughout this dispute. They did not*

react in any other than a proper way when they declined to vote on a choice of two options presented to them by management (both options had only one Nurse on nights, the central issue). They reacted only by grieving when management reduced their shifts to seven and a half hours in a day, where they had been on the much preferred eleven and a half hour a day shift previously

5. The Nurses took the view that they did not want to engage in a “one versus two” debate as to what constituted appropriate staffing for the night shift, rather they simply asked for a review by a “competent authority” who would make a reasoned assessment. This resulted in the reports of Morrie Steele, whose credentials were established elsewhere in this file and are not in dispute. Morrie Steele's reports did not substantiate the employer's position and that position was later modified to include two Nurses on the night shift.

6. Much of this complaint deals with the action taken by management, ostensibly dealing with a complaint of harassment under the Treasury Board policy on Prevention and Resolution of Harassment in the Workplace. The evidence at the hearing showed that the issue of “separation of the parties” arose very early in the scheme of things. The message that conveys is that “separation of the parties was of primary concern to the employer. The evidence also revealed a marked difference in how the parties, the complainant and the alleged respondents were treated by Doug Richmond, the Acting Executive Director.

7. The fact is that there was no harassment. The complaint was not founded. More than that, the complaint was found to be vexatious in nature.

8. More than that, one of the allegations (there were two) against Eva Sabir had to do with an e-mail she sent to the Nurses, including Eva Sabir who had been recipients of an e-mail sent by the complainant in the harassment complaint, Susan Falconer.(G-7 para 57) This e-mail identified Susan Falconer's role as a PIPSC representative (although the Nurses had made it clear that the spokespersons were Eva Sabir, Sandra Johnston, and Pamela Briar.) . Eva Sabir's response (G7 para 58) speaks for itself and needs no interpretation from me.

9. Evidence shows that the original e-mail from the complainant in the harassment complaint was “co-authored” by the Chief of Health Care for the RTC. (G-7 para 56).The Chief of Health Care and the complainant were ostensibly representing different interests in the matter of Staffing levels i.e.whether there should be one Nurse or more on the night shift. In fact the complainants has been specifically designated as spokespersons on the issue.. Management had

*a hand in drafting a note to the staff, ostensibly from a colleague and, as Counsel for the employer points out, a Steward, whose duty it was to represent the interest of the Nurses. The Nurses had no knowledge of the true origins of the e-mail. The e-mail contained information not known to the Respondents( who had been chosen by their peers as spokespersons on the issue).*

10. *The response elicited from Eva Sabir, by the “co-authored” e-mail, especially since it contained information (or perhaps more accurately disinformation) became an allegation in the complaint, which was so readily accepted by management, was deemed serious enough to warrant immediate expulsion from the Regional Treatment Centre. A review of the response itself does not reveal anything of that nature.*

11. *The affect of the harassment complaint was to immediately remove the leadership of the Registered Nurses, to whom the issue of “one Nurse on night shift” was so important. This was done on the eve of the Nurses meeting with Morrie Steele. Counsel for the employer contends that Complainants Pamela Briar and Sandra Johnston met with Morrie Steele, and as such were not dissuaded from meeting that day..*

12. *That does not do justice to the issue. On 23 July, Eva Sabir, suddenly, and without notice, was summoned to Doug Richmond's office and banished from the Regional Treatment Centre (RTC). This was the first she had heard of the complaint and the allegations. In her mind she had done nothing to warrant such allegations, and, in the full light of day there was no substance to them and they were in fact, not only groundless, but vexatious as well.*

13. *Attempts had been made, and messages left with Sandra Johnston and Pamela Briar as well, and by the time they met with Morrie Steele, they were aware that Eva Sabir was no longer at the RTC. Sandra Johnston and Pamela Briar were apprehensive, to say the least and the meeting with Morrie Steele and the “one Nurse on night shift” issue had taken on a whole different dimension. The situation as not at all as it had been on the morning of 23 July.*

14. *If the management plan had gone according to schedule, Sandra Johnston and Pam Briar would have been banished from the RTC on the same day Eva Sabir was. Evidence shows that the three were provided with a letter prohibiting them from the Institution grounds. In the event they were actually banished from the RTC at the earliest opportunity, July 26*

15 As with Eva Sabir, neither Sandra Johnston nor Pamela Briar had any inkling this was coming until it happened to Eva Sabir. Neither had done anything which they considered harassing to the complainant in the harassment complaint and so they had no reason to suspect that management might take action against them. In fact the report of the Harassment Investigation (prepared by an Investigator selected by management) exonerated them, as it had in Eva Sabir, and, as in the case of Eva Sabir, found that the complaint against them was not only unsubstantiated, but vexatious.

16 During the cross examination I asked Pauline Guenette, the Regional Co-ordinator for Anti-Harassment and Mediation, what Pamela Briar was alleged to have done. There was no reply, which is not surprising. A review of the complaint of Harassment reveals that she is not alleged to have done anything. Why then was Pamela Briar banished from the RTC when there were no specific allegations against her? The banishment makes sense only if the real reason was to banish the leaders of the Nurses on the “one Nurse on night shift issue” because very clearly she had a leadership role there

17 Similarly, Counsel for the employer, puts emphasis on the “Cluster” and suggests that appointment to the “Cluster” meant that staff could be assigned anywhere within that “Cluster” at management whim. This is over simplification. There is no suggestion of a “Despatch” system, for example. Registered Nurse did not report to a “central location” from whence they were assigned here and there. Each site is a place where employees regularly attend work. The Directives and Policies of the Public Service, such as the Travel Directive or the Relocation Directive are applied Evidence was given at the hearing by several Nurses that they are not aware of any Nurse being assigned to an Institution against her will. The RTC was where they worked.

18. Indeed, Doug Richmond gave evidence related to his efforts to place the three, and efforts (and consequences) are frequently referred to in G7. This was not a routine happening. No evidence was introduced which showed that the separation was particularly necessary.

19. The evidence does clearly show that the reason (at least the “on the surface”) reason the three were exiled from the RTC was to separate the “parties” to the harassment complaint. This might stand if there were anything to the harassment complaint, but there was not. In reality, the decision to “separate the parties” had the affect of removing the leadership of the Nurses at a critical time. The Nurses had done nothing more than request the view of a “competent authority” concerning staffing on the night shift,

but in one fell swoop, their leadership was gone. That they were gone for no good reason was established later by the Investigation report.

20. That the three, who just “happened” to be the leaders on the night shift staffing issue, were the persons exiled (although no one could point to any thing that Pam Briar had allegedly done). Unlike Eva Sabir, who had answered the “co-authored” e-mail, sending copies to each person who had been originally copied on the “co-authored e-mail”, Not even that could be ascribed to Pam Briar. If the three had not been Stewards and not been raising staffing concerns on behalf of their colleagues, would they have been accused and banished? I think not.

21. Counsel for the Employer points out that the Nurses had other options. For example, he claims that the Nurses had access to section 128 of the Canada Labour Code to register a complaint about unsafe staffing. Is Counsel for the employer seriously suggesting that?. The facts of the case show that the Nurses were making progress. Management had agreed to put the issue to a “Competent Authority” as the Nurses had wanted. Why would a section 128 complaint be more appropriate?

22. The section 23 complaint before the board is not an alternative to a section 128 complaint. Under the Canada Labour Code. The evidence is that what the Nurses were doing was in fact working. Perhaps it was working too well. The complaint of harassment did not stand scrutiny. But it had the affect of providing management with an excuse to move the three at a critical moment, and that is what this section 23 complaint is all about. The section 23 complaint is not about the staffing issue. The section 23 complaint is about the attempt by management, on an issue which had no substance, to use the issue which had no substance as a pretext to accomplish another purpose.

23 It is not possible to enter the heads of people and examine motives. In this case, when the “one Nurse on nights”, issue is followed by the “co-authored e-mail” and the response, followed by the allegation of harassment, followed by the haste to separate the parties, and the separation of the parties, followed by the conclusion that the complaints were unsubstantiated and indeed, vexatious, it is not a pretty picture. We can never know what was in peoples heads, but the pattern is clear.

24. There was no obligation to move the complainants. That management did so in so public a fashion created an appearance that they were “guilty” (though they weren't) and the complainants were constrained from disputing this

*in any way by managements muzzling them in the name of “confidentiality” .*

*25. It is the contention of the complainants that the decision to banish them from the RTC was not related to harassment because there was no harassment. The decision to banish them was solely related to their exercise of their legitimate function as Stewards of their Union. Only active Stewards were banished. That the real issue, with which Nurses were concerned, remained an issue is due to other Nurses picking up the issue and continuing with it.(G-15, G-16)*

*The complainants seek an order from the Board declaring that the Correctional Service was in contravention of sections 8 (1), 8 ( c ) (ii) and 9 (I) of the former Act.*

*And*

*That the Correctional Service cease and desist from such contraventions*

*and*

*That the Correctional Service be constrained from acting in a similar fashion in future.*

*[Sic throughout]*

### Reasons

[144] These complaints were filed pursuant to paragraph 23(1)(a) of the *PSSRA*, which states that: “The Board shall examine and inquire into any complaint made to it that the employer . . . or any person acting on behalf of the employer . . . has failed to observe any prohibitions contained in section 8, 9 or 10”.

[145] In their complaints, the complainants named Messrs. Richmond, Hooper and Demers as respondents. However, they allege that the CSC violated subsection 8(1), subparagraph 8(2)(c)(ii) and subsection 9(1) of the *PSSRA*, and requested the following corrective action:

*5.(i) A declaration that sections 8 (1), 8 ( c ) (ii), and 9 ( i ) of the Act have been contravened.*

*(ii) That the Correctional Service cease and desist from such contravention.*

*(iii) That the Correctional Service restore the complainant to her work place [sic] and otherwise make her whole in every way.*

*(iv) That the Correctional Service be constrained from acting in a similar fashion in the future.*

[146] The first issue to be addressed is the status of the named respondents and the relevant sections of the *PSSRA*. Subsection 8(1), subparagraph 8(2)(c)(ii) and subsection 9(1) refer explicitly to a person “who occupies a managerial or confidential position”.

[147] The complaints and the requested corrective action should have been directed specifically to Messrs. Richmond, Hooper and Demers, and not the CSC.

[148] The CSC cannot be a respondent, as it does not fall within the purview against which the prohibitions contained in subsection 8(1), subparagraph 8(2)(c)(ii) and subsection 9(1) of the *PSSRA* can apply.

### Merits of the complaints

[149] The evidence adduced at the hearing clearly demonstrates that the dispute between the nurses at the RTC and Ms. Gaskell revolved around two issues: the roster and having only one nurse on the evening shift.

[150] The concerns of the complainants were that having only one nurse on the evening shift put their safety, their patients’ safety and their nursing practice at risk. Ms. Gaskell’s concerns were overtime costs and schedules within the RTC.

[151] Management was adamant that having only one nurse on the evening shift was reasonable, safe and appropriate. It was willing to include the PIPSC’s involvement in exploring different rosters, but with the caveat that only one nurse on the evening shift was a *fait accompli*. A number of meetings were held between the two parties, but with no success. The complainants’ position was that no vote on the roster would be taken until the one-nurse issue was resolved.

[152] On May 10, 2004, management implemented a new roster, which changed the 11.75-hour shift to a 7.5-hour shift, 7 days on, 3 days off and 7 days on, 4 days off. The scheduling of one nurse on the evening shift was also implemented.

[153] The nurses believed that the new roster was in violation of the relevant collective agreement, and they filed numerous grievances. As well, they felt that there was a need for a threat risk assessment to be conducted by a qualified third party to address their safety concerns about having only one nurse on the evening shift at the RTC.



[154] The complainants and other nurses testified that the nurses' morale was low, and that confrontations between staff and management and between the nurses themselves occurred frequently after management implemented the changes at the RTC.

[155] As is apparent from Exhibit G-7, paragraph 56, Ms. Gaskell and Ms. Falconer drafted the email sent on July 1, 2004 (Exhibit G-6), by Ms. Falconer to the affected nurses. The email suggested that the nurses work on a roster that allowed for more time off and limited working alone on the evening shift to eight hours.

[156] As well, Ms. Falconer's email relayed information about management's position on the risk assessment and having only one nurse on the evening shift. Ms. Sabir was obviously offended by this email, as she and Ms. Johnston were the elected spokespersons for the nurses and were unaware of this information.

[157] That same day, on July 1, 2004, Ms. Falconer sent an email to Mr. Wickstrom (Exhibit G-7, paragraph 64). In her email, Ms. Falconer informed Mr. Wickstrom that she was being ostracized by her peers at the RTC and that she was considering whether or not she should file a harassment complaint. She also requested his assistance in this matter.

[158] On July 12, 2004, Ms. Falconer received the following email from Mr. Wickstrom (Exhibit G-7, paragraph 65):

...

With respect to the matter of Stewards, I am distressed to read references to threats and intimidation. I am a believer in democratic unionism, and that is one of the things I appreciate most about my association with PIPSC. The Regional Treatment Center, particularly and the Fraser Valley Branch generally have an envied reputation for Steward activism and involvement.

A value we must never leave sight of is the value of inclusion, and the views that all active Stewards must be heard and respected inside the tent.

Once the Steward body and the membership have decided, that decision becomes the voice of the Union (except where PIPSC by-laws are contrary) and a principle of the Union movement is solidarity.

You mention complaints etc and the PIPSC By-laws do have provision as to resolution of issues between members within the Union, but I sense that is not what you are asking me.

My general feeling is that there are too many issues and folks with interests other than ours out there to spend a lot of time involved in internal conflict. I am not sure that I really grasp what is happening, and respecting your wish not to be contacted at work, I will provide you with the toll free number here ( if you don't already have it) the number is 1-800- 663- 0485.

...

[Sic throughout]

[159] The next day, on July 13, 2004, Ms. Falconer met with Mr. Richmond, Ms. Gaskell and Mr. Blakeway. According to Mr. Richmond, Ms. Falconer was very upset that the complainants were ostracizing her and that Mr. Wickstrom had yelled at her when she was discussing the RTC issues with him.

[160] Ms. Falconer chose to pursue her harassment complaint, and on July 16, 2004, she filed her formal written complaint.

[161] The Federal Court of Appeal in *Social Science Employees Association* (2004 FCA 165, ¶51) stated the following:

...

[51] *Paragraph 23(1)(a) of the Act provides that the Board shall examine and enquire into any complaint pertaining to an employer's failure to "observe any prohibition contained in section 8, 9 or 10". There can be no doubt whatsoever that such proof rests with the person or persons making the complaint, in this case, the respondents (See Veilleux and Public Service Commission, [1983] C.P.S.S.R.B. No. 9; Prue et Bhabba, [1989] C.R.T.F.P.C. n° 210; Alliance de la Fonction publique du Canada c. Little, [1996] C.R.T.F.P. n° 76 (Q.L.)).*

...

[162] In the same judgment, the Federal Court of Appeal also held that the complainant must prove that the employer had intent or anti-union animus if his complaint were to be allowed:

...

[53] *At paragraph 94 of its decision, the Board correctly, in my view, states that discrimination contrary to sections 8 and 9 of the Act “requires intent or anti-union animus”. In Re Major Foods, supra, at page 136, the arbitrator stated:*

*Labour boards have held for there to be an offence against a statutory prohibition, there must be demonstrated an intent to discriminate.*

[54] *It is clear from the Board's decision that there was no proof adduced before it that could support a conclusion of anti-union animus on the part of Treasury Board. Consequently, the only possible conclusion that the Board could have reached, on the evidence, was that the respondents had not met their burden of proof.*

...

[163] The complainants and Ms. Sharp would have the Board believe that Ms. Falconer's harassment complaint was conceived in collusion with CSC management, as the complaint would justify removing the complainants, effectively the union leadership, from the RTC. This would interfere with the representation of employees as contemplated by the PSSRA.

[164] There is no evidence that either Mr. Richmond, Mr. Hooper, Mr. Demers or Ms. Gaskell coerced, forced, threatened or intimidated Ms. Falconer into filing a harassment complaint.

[165] The complainants believed that their reassignment to different institutions was a conspiracy, and that without their presence at the RTC or at the meetings scheduled with Mr. Steele the roster issue and having a single nurse on the evening shift would not be championed. The complainants met with Mr. Steele and, as a result of his report, and further to discussions between the union and management, the roster issue and having two nurses on the evening shift were reinstated as of December 16, 2004.

[166] Ms. Falconer's harassment complaint should not have come as a surprise, since Mr. Wickstrom knew as early as July 1, 2004, that she felt threatened and intimidated and was considering filing a harassment complaint.

[167] Although the complainants believed that Ms. Falconer and CSC management contrived the harassment complaint, they did not adduce evidence to prove their belief. Ms. Sharp's evidence of a contrived plan between Ms. Falconer and CSC management was, as she stated, an "educated assumption" and that Ms. Falconer was manipulated into filing the harassment complaint.

[168] Mr. Richmond received a harassment complaint involving Ms. Falconer and the complainants, all PIPSC shop stewards. Mr. Richmond testified that with the advice from Human Resources he made the decision to consider separating the parties. Mr. Hooper believed that Ms. Falconer's complaint met the definition as per the Treasury Board *Policy on the Prevention and Resolution of Harassment in the Workplace*, and issued a convening order to investigate the complaint. Mediation was offered by Mr. Hooper to the parties in an attempt to resolve the complaint before an investigation was started, but only Ms. Falconer agreed.

[169] As early as July 13, 2004, Mr. Richmond contemplated separating the parties. He testified that he had considered doing so on three or four occasions in the past, but that he made no decision until he met with the complainants. No evidence was adduced that Mr. Richmond made a decision to remove the complainants because they were shop stewards. In fact, Ms. Falconer was also a shop steward. His decision to separate the parties, as he stated in his testimony, was his alone and was made taking into consideration the best interests of the RTC and the parties involved.

[170] The Board saw no evidence that the complainants were denied union representation when they met with Mr. Richmond or that any documentation related to the harassment complaint was withheld or denied. There were no acts of discrimination against the complainants by the respondents brought to my attention during the course of the hearing or in the written arguments. The complainants were temporarily reassigned as per their terms and conditions of employment while the harassment investigation was being conducted. The complainants could have sought permission from either the Executive Director or designate to visit the RTC while they were on temporary reassignment, but they chose not to do so.

[171] Mr. McCaffrey's final investigation report (Exhibit G-7, paragraph 181) states that "[t]he evidence is compelling in that there was an intention if not a plan to have the three [complainants] removed . . ." from the RTC. However, during his testimony, Mr. McCaffrey stated that, to his knowledge, Mr. Richmond was not involved in such a

plan. Perhaps Ms. Gaskell and unnamed others were intent on removing the complainants from the RTC. However, no nexus was drawn to the respondents that that was their intent. Mr. McCaffrey stated that he never interviewed either Mr. Hooper or Mr. Demers.

[172] The cavalier attitude of senior management, particularly Ms. McClung, Mr. Head and Dr. Gordon, in their untimely responses to concerns from the nurses and Mr. Wickstrom until Ms. Demers, the PIPSC National Vice-President, interceded certainly exasperated all the parties involved in these complaints.

[173] In conclusion, the complainants did not, from the evidence adduced, support that Messrs. Richmond, Hooper and Demers were involved in any anti-union animus activities or that they contravened subsection 8(1), subparagraph 8(2)(c)(ii) or subsection 9(1) of the *PSSRA*.

[174] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*

Order

[175] The complaints are denied.

October 31, 2006.

**D.R. Quigley,  
Board Member**